

Maine Yankee

321 OLD FERRY RD • WISCASSET, ME 04578-4922

MN-10-011, RA 10-034

June 17, 2010

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Reference: (a) License No. DPR-36 (Docket No. 50-309, 72-030)
(b) 10 CFR 50.80

Subject: Maine Yankee - Application for NRC Consent to Indirect License Transfer - Acquisition of Maine & Maritime Corporation (parent of Maine Public Service Company) by BHE Holdings, Inc (parent of Bangor Hydro Electric Company)

Dear Sir or Madam:

Maine Yankee Atomic Power Company ("Maine Yankee"), acting on behalf of the Maine Public Service Company ("MPS"), a minority co-owner of Maine Yankee, hereby notifies the Nuclear Regulatory Commission ("NRC") of the pending acquisition of Maine & Maritimes Corporation ("M&M"), the parent of MPS, by BHE Holdings, Inc. ("BHE"). Maine Yankee holds a possession only license for a spent fuel storage facility located in Wiscasset, Maine, and is the sole licensee for the facility; operation of a nuclear electric generating plant at the site permanently ceased in 1997. MPS does not directly own an interest in the facility and is not a licensee, but holds a 5.0% interest in the licensee, Maine Yankee.

The acquisition of MPS by BHE would be the result of a pending merger of M&M with a temporary, special purpose subsidiary of BHE; the special purpose subsidiary will be merged with M&M and M&M will become the successor subsidiary. In other words, the newly-created subsidiary will cease to exist after the merger. The merger and acquisition is anticipated by the parties to result in financial benefits for retail electric service customers in their service areas of eastern Maine. Bangor Hydro-Electric Company is a subsidiary of BHE and holds a 7.0% interest in Maine Yankee. As a result of the proposed transaction, MPS and Bangor Hydro-Electric will continue to provide retail electric service to their customers in eastern Maine, with some synergies anticipated by functionally combining the expertise of these geographical electric utility neighbors and reducing the cost of capital to some extent for each company. MPS and Bangor Hydro-Electric will continue to hold their respective 5.0% and 7.0% interests in Maine Yankee (the company, not the facility). No changes in licensed activities, the management of the facility, or in day-to-day operation of the facility will result from the proposed acquisition. The

AMSSOI
FSME

shareholders of Maine Yankee are each obligated to pay facility operating expenses in direct proportion to their ownership interest in accordance to rate schedules on file with the Federal Energy Regulatory Commission. Current operating expenses include decommissioning and spent fuel management costs, including operation of the spent fuel storage facility.

Because MPS and Bangor Hydro-Electric do *not* hold the license for the Maine Yankee site and are minority shareholders of stock in the licensee, collectively holding a 12.0% interest, the proposed transaction does not involve the transfer of control, either direct or indirect, of the site or the NRC license for the facility. Accordingly, consistent with precedent for other transactions involving shareholders in Yankee companies, NRC approval of the transaction does not appear to be necessary. *See* February 21, 2008, NRC letter from Ms. Lydia W. Chang, Branch Chief, to Catherine P. McCarthy, Esq. (NRC Accession No. ML 080140289); February 24, 2000 NRC letter from Mr. Samuel J. Collins, Director, Office of Nuclear Reactor Regulation, to Perry D. Robinson, Esq. (NRC Accession No. ML 003685187)

BHE Holdings is a subsidiary of Emera US Holdings, Inc., a domestic corporation, which, in turn, is subsidiary of Emera, Inc., a Canadian corporation with headquarters in Halifax, Nova Scotia, Canada ("Emera"). As a result of the proposed merger, Emera, a Canadian corporation, through its ownership of its subsidiaries, would indirectly own a cumulative 12.0% interest in an NRC licensee -- Maine Yankee. However, because the interest is not direct, and in light of the small size of the ownership interest and the commercial relationship between the co-owners of Maine Yankee, Emera will not exercise control, or have the ability to control, Maine Yankee or its management. Consequently, the prohibitions on foreign ownership contained in Section § 103(d) of the Atomic Energy Act and 10 C.F.R. § 50.38 are not implicated.

In summary, the proposed indirect acquisition of MPS's minority interest in Maine Yankee will be consistent with the requirements set forth in NRC regulations and the relevant NRC guidance. The proposed transaction will *not* in itself result in any physical changes to the Maine Yankee site or spent fuel storage facility; changes in the officers, personnel, or day-to-day operation of Maine Yankee; or any changes to the current facility licensing basis. It will neither have any adverse impact on the public health and safety, nor be inimical to the common defense and security. Prior NRC threshold reviews indicate that NRC approval of the acquisition is not required.

To the extent that the acquisition might be considered an indirect transfer of an interest in the Maine Yankee license, an application for NRC consent to the indirect transfer in accordance with 10 C.F.R. 50.80 is enclosed.

Maine Public Service Company desires to close the transaction as soon as all required regulatory approvals and rulings are received and/or waiting periods have expired. The proposed transaction is subject to approval by the Federal Energy Regulatory Commission ("FERC") and the Maine Public Service Commission. Also, notifications are required to be filed with the

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Maine Yankee) License No. DPR-36
Application for Consent to Indirect Transfer) Docket No. 50-309, 72-030

AFFIRMATION

I, JAMES CONNELL, being duly sworn, hereby depose and state that I am VICE PRESIDENT, for Maine Yankee; that I am duly authorized to sign and file with the Nuclear Regulatory Commission the foregoing application for consent for the indirect transfer of control of license; that I am familiar with the content thereof; and that the matters set forth therein with Maine Yankee are true and correct to the best of my knowledge and belief.



STATE OF MAINE)

COUNTY OF)

Subscribed and sworn to me, a ^{an attorney} ~~Notary Public~~, in and for the State of Maine, this 17th day of June, 2010.


Maine Bar # 008263

ATTACHMENT A

ATTACHMENT A

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of :)	License No. DPR-36
)	Docket No. 50-309,72-030
Maine Yankee Atomic Power Company)	10 C.F.R. 50.80
Indirect License Transfer)	
_____)	

**Application for NRC Consent to Indirect License Transfer –
Acquisition of Maine & Maritime Corporation (parent of Maine Public Service Company)
by BHE Holdings, Inc (parent of Bangor Hydro Electric Company)**

I. Introduction

From 1972 until permanent shutdown in 1997, Maine Yankee Atomic Power Company (“Maine Yankee”) operated a 900-megawatt (electric) pressurized water reactor at a site in Wiscasset, Maine. The power reactor has since been dismantled and decommissioned, and much of the site released from the Nuclear Regulatory Commission (“NRC”) license. Maine Yankee now holds a license for possession of a reduced site and a general license for an independent spent fuel storage facility at the site.

Maine Public Service Company (“MPS”) holds a 5% (five percent) interest in Maine Yankee (the licensee). MPS is a regulated electric utility based in Presque Isle, Maine, and provides electric service to approximately 36,000 customer accounts in eastern Maine’s Aroostook County. MPS is owned by Maine & Marines Resources Corporation (“M&M”), a publicly traded company, which is owned in turn by BHE Holdings, Inc. (“BHE Holdings”).

BHE Holdings also owns Bangor Hydro-Electric Company (“Bangor Hydro”). Bangor Hydro currently holds a 7% (seven percent) interest in Maine Yankee (the licensee). Bangor-Hydro is a regulated electric utility based in Bangor, Maine and provides electric service to approximately 117,000 customers in portions of the Maine counties of Penobscot, Hancock, Washington, Waldo, Piscataquis, and Aroostook.

BHE Holdings is a subsidiary of Emera US Holdings, Inc., a domestic corporation which, in turn, is subsidiary of Emera, Inc., a Canadian corporation with headquarters in Halifax, Nova Scotia, Canada (“Emera”). See Attachment B for an organizational chart showing the corporate entities mentioned above.

MPS hereby requests — to the extent necessary — the consent of the Nuclear Regulatory Commission (“NRC”) to the indirect transfer of License DPR-36 (“License”) pursuant to Section 184 of the Atomic Energy Act (“AEA”) and 10 C.F.R. 50.80. Although the parties do not believe approval is required because there will be no transfer of control of an NRC license, this indirect transfer application addresses a merger agreement executed on March 12, 2010 (“Merger Agreement”) between BHE and M&M, the parent company of MPS. In accordance with the Merger Agreement, M&M will become a wholly-owned subsidiary of BHE. As stated previously, Bangor Hydro is already a wholly-owned subsidiary of BHE; its interest in Maine Yankee would not be affected by the anticipated merger.

The merger will not become final until it is approved by M&M shareholders and other regulatory approvals are received. Federal Energy Regulatory Commission (“FERC”) approval is expected by the end of August 2010, and Maine Public Utilities Commission approval shortly thereafter.

II. Description, Purpose and Nature of the Transaction Necessitating or Making
Desirable the Transfer of the License

On March 12, 2010, BHE and M&M (the parent of MPS) agreed to a merger between BHE and M&M. Under the terms of the Merger Agreement, M&M will merge with and into a Merger Sub, a subsidiary of BHE created for the purpose of the merger, with M&M being the surviving corporation and with the existing ownership structure of BHE otherwise remaining undisturbed (“the Merger”). After the Merger, M&M will be a wholly-owned subsidiary of BHE, rather than a publicly traded corporation.

The Merger Agreement contemplates no other changes in the ownership or organization of MPS or in Maine Yankee, and no change in any licensed activity conducted by Maine Yankee. MPS will remain the owner of its 5% direct ownership interest in Maine Yankee after the merger; Bangor Hydro will continue, without change, its 7% direct ownership interest in Maine Yankee.

The proposed Merger is subject to regulatory review at the state and federal level. The Maine Public Utilities Commission (“MPUC”) must review the proposed merger under Section 708 of the Maine Revised Statutes, which requires a finding that any reorganization resulting from a merger not be adverse to the public interest. The proposed merger must also be approved under Section 203 of the Federal Power Act, which requires Federal Energy Regulatory Commission (“FERC”) approval for the disposition or merger of FERC jurisdictional facilities such as MPS’s transmission facilities. Under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, the Federal Trade Commission (“FTC”) must approve all mergers above certain size thresholds (*e.g.*, at least one party to the transaction must have \$100 million or more in annual net sales or assets,

and the other must have \$10 million or more), which are met in this case. The same filing that is made with the FTC must also be made with the Department of Justice's Antitrust Division, which reviews the filing to determine whether there are any anti-competitive effects of the merger.

The proposed Merger is anticipated by its parties to result in financial benefits for retail electric service customers in their service areas of eastern Maine. As a result of the proposed Merger, MPS and Bangor Hydro will continue to provide retail electric service to their customers in eastern Maine. Some synergies are expected by the parties to be achieved by functionally combining the expertise of these geographical neighbors and reducing the cost of capital to some extent for each company.

III. Supporting Information

A. Description of Business; Organization and Management

There are no planned management changes for the NRC licensee, Maine Yankee, resulting directly from the Merger. Maine Yankee will continue to manage its spent fuel storage facility licensed by the NRC; no change in organization or management at Maine Yankee will result from the Merger.

B. Financial Qualifications

MPS's financial obligations with respect to Maine Yankee will not change as a result of the Merger. Reasonable assurance exists for the necessary funds for ongoing activities at the spent fuel storage facility and for meeting the financial obligations associated with the facility and site. As an "electric utility" as defined in 10 C.F.R. §50.2, MPS will continue to meet is

financial obligations to Maine Yankee. The shareholders of Maine Yankee are each obligated to pay Maine Yankee's operating expenses in direct proportion to their ownership interest in accordance to rate schedules on file with the Federal Energy Regulatory Commission. Current operating expenses include decommissioning and spent fuel management costs, including operation of the spent fuel storage facility.

Furthermore, because the power plant was permanently shut-down and fully dismantled and decommissioned, the financial obligations associated with MPS's 5% ownership interest are significantly reduced relative to an operating facility.

Moreover, as explained below, Maine Yankee's Decommissioning Financial Assurance Status Report for the year ending December 31, 2008 (filed with the NRC in March, 2009) demonstrates Maine Yankee's projected ability to fund spent fuel storage and dismantlement and final decommissioning of the spent fuel storage facility.

DECOMMISSION FUNDING ASSURANCE

As reported in Maine Yankee's 2010 Decommissioning Funding Assurance Status Report, submitted by letter dated March 9, 2010, the amount accumulated as of December 31, 2009 for items included in 10 CFR 50.75 (e)(1)(ii) was \$95.7 million. This accrued market value balance includes amounts in the Decommissioning Trust for all decommissioning costs including site restoration and long-term spent fuel storage as well as decommissioning as defined in 10 CFR §50.75. Since the original power plant has been decommissioned and the license amended, the only remaining decommissioning is decontamination and dismantlement of the spent fuel storage facility once the fuel is removed. The cost estimate for beyond 2008 was \$123.9 million (in 2008 dollars) and included an estimate for spent fuel management costs operations through 2023 (\$110.6 million) and dismantlement and decommissioning of the facility (\$13.3 million).

such, there is reasonable assurance that sufficient funding exists to meet future decommissioning expenses.

D. Technical Qualifications

All spent fuel management and future decommissioning activities will be managed by the NRC licensee, Maine Yankee. No changes in licensed activities will result from the Merger. As additional background, on March 15, 2004, Maine Yankee submitted letter MN-04-020 requesting an amendment to the facility operating license pursuant to 10 CFR 50.90 and in accordance with its License Termination Plan, to indicate the NRC's approval of the release of the site land not associated with spent fuel management from jurisdiction of the License. On September 30, 2005, NRC issued Amendment No. 172 which allowed the unrestricted release of the remaining land under the License with the exception of the land where the spent fuel storage facility is located and a 3.17 acre parcel of land adjacent to the facility. Maine Yankee continues to maintain the technical capabilities necessary to oversee the spent fuel storage facility and the Merger will in itself have no effect on the licensee's technical capabilities.

E. Antitrust Review

The NRC has found that antitrust reviews of post-operating license transfer applications are neither required nor authorized by the Atomic Energy Act. *Final Rule, Antitrust Review Authority: Clarification*, 65 Fed. Reg. 44,649 (July 19, 2000); See also *Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1)*, CLI-99-19, 49 NRC 441 (1999). Accordingly, no antitrust review¹ is required with respect to the indirect transfers of control that would result

¹ The Energy Policy Act of 2005, Section 625, amended Section 105 c. of the Atomic Energy Act of 1954 ("AEA") 42 U.S.C. 2135(c) to eliminate antitrust reviews for

from the proposed merger.

F. Foreign Ownership and Control Information

As a result of the proposed merger, Emera, a Canadian corporation would, through its ownership of its subsidiaries, indirectly own a cumulative 12% interest in an NRC licensee — Maine Yankee. However, because the interest is not direct, and in light of the small size of the ownership interest and the commercial relationship between the co-owners of Maine Yankee, Emera will not be in a position to exercise ultimate authority, or have the ability to control, Maine Yankee or its management. Consequently, the prohibitions on foreign ownership contained in Section § 103(d) of the Atomic Energy Act and 10 C.F.R. § 50.38 are not implicated.

G. Environmental Considerations

The transfer described in this application does not involve any change to the facility operations and does not change any environmental impact previously evaluated. Furthermore, the NRC has determined that license transfers and any associated amendments are categorically exempt from environmental review. *See* 10 C.F.R. 51.22(c)(21). This application, therefore, involves no significant environmental impact.

H. Restricted Data

This application does not contain any Restricted Data or other classified defense information, and it is not expected that any such information associated with Maine Yankee's activities will be accessible by MPS, M&M, BHE or Emera directors, officers or employees. To

applications for new licenses for the construction or operation of facilities under Section 103 or 104 b. of the AEA.

the extent that Maine Yankee licensed activities involve Restricted Data, Maine Yankee will appropriately safeguard such information in accordance with NRC requirements.

I. Conforming License Amendments

The proposed merger will not affect any licensee status and will not require any amendment to the facility license.

IV. Effective Date

All regulatory approvals and completion of the merger are anticipated by the end of September 2010.

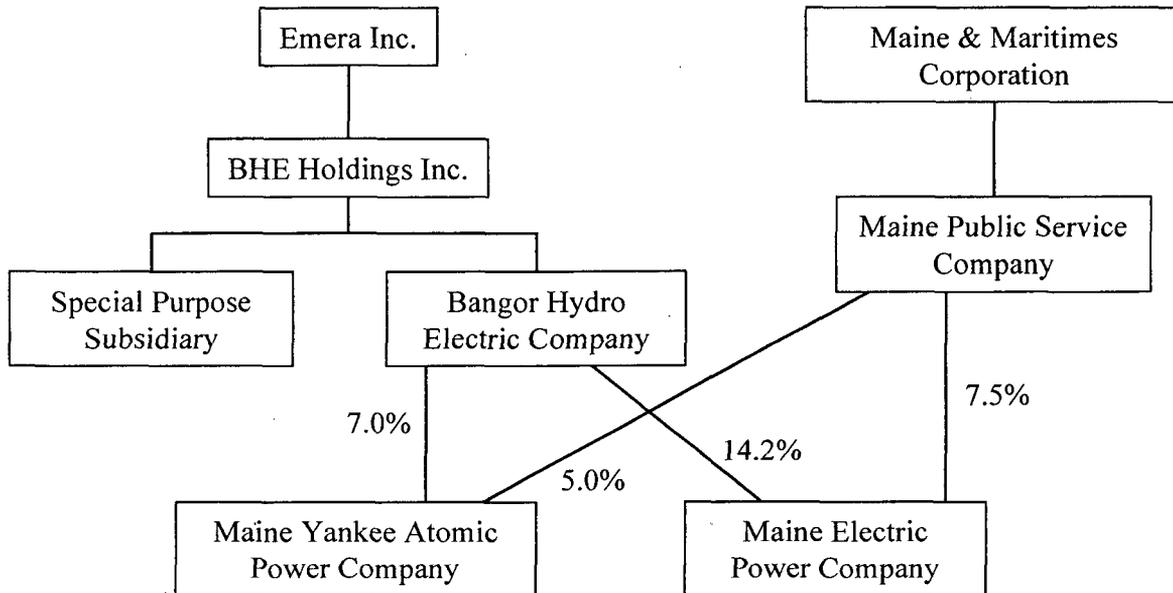
V. Conclusion

For the foregoing reasons, and only if necessary, the NRC is requested to consent to an indirect transfer of the possession only License No. DPR-36 held by Maine Yankee as described herein, that would result from the merger of Maine Yankee's parent, M&M, and BHE, the parent of Bangor Hydro.

ATTACHMENT B

Organizational Charts

Before Transaction



After Transaction

